

## Message Text

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ORIGIN L-02

INFO OCT-01 ARA-06 ISO-00 AID-05 JUSE-00 /014 R

DRAFTED BY L/M:JABOYD:EJS  
APPROVED BY L/M:KEMALMBORG  
AID/GC/LA:J. MARQUEZ/L.LUNDY  
ARA/LA: LAZAR  
AID/GC:LGRANT  
JUSTICE: J.HERGEN  
DESIRED DISTRIBUTION  
JUSTICE: J. HERGEN

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P 172204Z MAR 75  
FM SECSTATE WASHDC  
TO AMEMBASSY GUATEMALA PRIORITY

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E.O. 11652: N/A  
TAGS: OGEN, GT  
SUBJECT: SUIT AGAINST USAID/GUATEMALA  
REF: GUATEMALA 1380  
PASS TO RLA JOHN KAHLE

1. DEPARTMENT SUGGESTS EMBASSY REQUEST THAT GOG DISPOSE OF THIS CASE WITHOUT THE DIRECT PARTICIPATION OF USG. IN APPROACH WHICH MAY BE MADE WITH A DIPLOMATIC NOTE CONTAINING THE CONTENTS OF THIS PARA 1, EMBASSY SHOULD STRESS THAT THESE CLAIMANTS WERE HIRED BY THE GOG, NOT THEUSG. USG GRANTED FUNDS TO GOG. GOG HIRED CLAIMANTS AS EMPLOYEES. USG HAS NO REPEAT NO LEGAL RELATIONSHIP TO CLAIMANTS. DEPT SUGGESTS THAT EMBASSY REQUEST GOG TO MAKE KNOWN THESE KEY FACTS TO THE COURT AND THE CLAIMANTS. SUCH SHOULD DISPOSE OF THIS CASE WITHOUT THE NECESSITY OF USG HIRING LOCAL COUNSEL OR RAISING OTHER LEGAL DEFENSES.

2. THOUGH DEPT BELIEVES THAT ABOVE IS DISPOSITIVE, DEPT OFFERS FOLLOWING WHICH MAY BE CALLED UPON AS TALKING  
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POINTS BUT WHICH SHOULD NOT BE OFFERED IN A DIPLOMATIC

NOTE FOR FEAR THAT IMPORTANCE OF PARA 1 ABOVE WILL BE UNDULY DEPRECIATED. (A) THOUGH THE USG ADHERES TO THE RESTRICTIVE THEORY OF SOVEREIGN IMMUNITY, THE USG DOES NOT CONSENT TO BEING SUED IN A LABOR COURT OR ANY OTHER COURT WITH LESS THAN GENERAL JURISDICTION AS THE FOURTH

COURT OF JUSTICE OF THE FIRST ECONOMICONE, LABOR AND SOCIAL WELFARE, APPEARS TO BE. (B) USAID GUATEMALA IS NOT A JURISTIC ENTITY. THE PHRASE "USAID GUATEMALA" MAY DESCRIBE A REPRESENTATIVE AGENT OF THE USG, BUT, GIVEN THE NATURE OF THIS SUIT, THE USG, NOT USAID GUATEMALA, WOULD BE THE PROPER DEFENDANT. THUS THESE CAUSES OF ACTION IN THEIR PRESENT FORM APPEAR TO BE DEFECTIVE. (C) THE USG DOES NOT BELIEVE THAT NOTICE OF SERVICE OF PROCESS MAY BE EFFECTED ON THE USG BY DELIVERING SAME UPON A RECEPTIONIST AT THE AMERICAN EMBASSY. (FYI: IN A CIRCULAR NOTE DATED JUNE 16, 1961, THE USG REQUESTED THAT ALL SUCH NOTICES BE SERVED UPON THE U.S. EMBASSY THROUGH THE FOREIGN OFFICE. WE HOPE THAT THE GOG IS ABLE TO HANDLE THIS CASE WITHOUT JUDICIAL ACTION ON OUR PART, BUT, IF SUCH IS NOT POSSIBLE, WE WOULD APPRECIATE RECEIVING ANY SUCH NOTICES THROUGH THE DIPLOMATIC CHANNEL.)

3. DEPT REQUESTS NOTIFICATION ASAP IF ANY PROPERTY OF USG IS ATTACHED PURSUANT TO THESE CAUSES OF ACTION. DEPT DOES NOT BELIEVE PROTEST IN ANTICIPATION OF ATTACHMENT IS APPROPRIATE.

4. DEPT HAS BEEN INFORMED THAT CYNTHIA BERSKY HAS BEEN REQUESTED TO APPEAR AS A WITNESS. DEPT REQUESTS EMBASSY (A) FORWARD ANY DOCUMENTS SERVED ON EMBASSY OR MS BERSKY OR ANY OTHER USG OFFICERS FOR THE PURPOSE OF OBTAINING TESTIMONY THESE CAUSES OF ACTION, (B) DESCRIBE ANY LIMITATIONS PLACED ON SUCH WITNESSES WHILE AWAITING A HEARING, AND (C) DESCRIBE ANY DIPLOMATIC NOTE SUBMITTED TO OR RECEIVED FROM GOG DEFINING ANY IMMUNITY WHICH MS. BERSKY OR OTHER USG WITNESSES HAVE UNDER VIENNA CONVENTION ON DIPLOMATIC RELATIONS OR OTHER BILATERAL AGREEMENTS BETWEEN USG AND GOG.

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5. JUSTICE DOES NOT WISH TO RETAIN COUNSEL AT THIS TIME. DEPT DOES NOT, REPEAT NOT, WISH TO ASSERT SOVEREIGN IMMUNITY AT THIS TIME IN THAT THAT QUESTION SHOULD NOT EVEN ARISE IN VIEW OF PARA 1 ABOVE; DEPT DOES NOT CONSIDER PARA 2(A) ABOVE TO BE AN ASSERTION OF SOVEREIGN IMMUNITY IN THAT NATURE OF JURISDICTION OF THIS PARTICULAR GOG COURT OVER USG, NOT POWER OF A GOG COURT OF GENERAL JURISDICTION OVER USG, IS IN QUESTION. ROBINSON

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** n/a  
**Control Number:** n/a  
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**Draft Date:** 17 MAR 1975  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** MorefiRH  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
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**Executive Order:** N/A  
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**Original Handling Restrictions:** n/a  
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**Page Count:** 3  
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**Reference:** 75 GUATEMALA 1380  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** MorefiRH  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 09 APR 2003  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <09 APR 2003 by KelleyW0>; APPROVED <20 MAY 2003 by MorefiRH>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
05 JUL 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
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**Status:** NATIVE  
**Subject:** SUIT AGAINST USAID/GUATEMALA  
**TAGS:** OGEN, GT  
**To:** GUATEMALA  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006